

April 15, 2019

Mr. Henry Leskinen
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, Maryland 21057

Re: Libs Lane Extended
Between Morse Lane and Libs Lane
Dundalk, Maryland 21222
Critical Area Administrative Variance
DEPS Tracking Number: 02-19-2941

Dear Mr. Leskinen:

The Department of Environmental Protection and Sustainability (DEPS) has completed an evaluation of your variance request to allow for forest clearing in excess of the 30 percent clearing limit in the Critical Area, and to allow for lot coverage in excess of 31.25 percent coverage allowed in a Limited Development Area of the Critical Area on lots less than 0.5-acre. Specifically, the construction of the private road will result in the removal of all 7,844 square feet (sf) of forest in the road right-of-way, representing forest clearing of 100 percent. Associated grading in an adjoining 10-foot wide Baltimore County road widening right-of-way will result in the removal of all 5,106 sf of forest, which represents forest clearing of 100 percent. The total, proposed forest clearing is 12,950 sf. Construction of the private road will increase lot coverage in the road right-of-way from an existing 3,578 sf to 12,581 sf. This represents total lot coverage of 98.5 percent.

The project involves the extension of Libs Lane, a private road, from its current terminus west of Shore Road and Wise Avenue, extended to Morse Lane, in the Dundalk section of Baltimore County. The road extension is being required by the Baltimore County Board of Liquor License Commissioners as a condition for granting the applicant a liquor license for a restaurant that the applicant is opening on the former Rudy's Marina site.

The applicant originally considered a "no-build" alternative. Libs Lane would not be extended and access to the restaurant site would be via existing Wise Avenue. This alternative was opposed by homeowners of the Beachwood Estates subdivision that reside along Wise Avenue, who did not want restaurant patrons traveling on a residential street.

The County Board of Liquor License Commissioners agreed with the homeowners and will not grant the applicant a liquor license for the restaurant unless Libs Lane is constructed. Additionally, the Board has restricted the hours that the restaurant can remain open until the road extension is completed. For these reasons, this option was rejected. If other road alignments to the south were available, they would not reduce forest clearing or lot coverage and would shift the road closer to existing homes on Wise Avenue. Shifting the road to the north would not reduce forest clearing or lot coverage and would move the road into closer proximity to nontidal wetlands, tidal wetlands, and tidal waters. These alternatives were rejected for these reasons.

The Director of DEPS may grant a variance from the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. The road rights-of-way are particularly narrow. In addition, the 20-foot width of the road right-of-way and the 10-foot width of the Baltimore County road widening right-of-way were established by others and not by the applicant. The narrowness of these rights-of-way makes it impossible to construct a road to minimum County standards without impacting almost all of the forest and paving all of the road right-of-way. A literal enforcement of the regulations would prevent construction of the road extension, constituting an unwarranted hardship, given that the applicant is required to construct the road to fully operate the restaurant, therefore, the first criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. Under similar circumstances, variances have been granted to allow for forest clearing in excess of allowable standards and construct lot coverage in excess of 31.25 percent. Literal enforcement of the Critical Area regulations on this property would deprive the applicant of rights commonly enjoyed by other property owners, therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. The construction of the road within the Critical Area on a similar property with similar constraints and requirements would not be denied, if all other criteria for a Critical Area Variance were met, therefore, the third criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. The road rights-of-way were established by others. The road must be constructed to meet County standards, and the proposed location of the road is the only feasible alternative. Site work or construction has not started on the property, and the applicant is not requesting this variance due to conditions on neighboring properties. Therefore, the fourth criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The road extension has been designed to minimize grading and the overall limit of disturbance to the extent practicable. Sediment control will be maintained throughout construction operations to prevent runoff from leaving the site and impacting the water quality of tidal and nontidal wetlands on Parcel 4 and Back River. The applicant proposes to mitigate for forest clearing by the payment of a fee-in-lieu. Mitigation for forest clearing in excess of 30 percent must be provided at a ratio of 3:1, for a mitigation requirement of 38,850 sf (12,950 sf X 3). The fee for this forest mitigation is \$21,367.50 (38,850 sf X \$0.55/sf). The 6,026 sf of forest clearing on Parcel 4 is less than 10 percent and not the subject of this variance request. Mitigation for that forest clearing must be provide at 1:1 for a mitigation requirement of 6,026 sf, which will be met by the payment of a fee-in-lieu of \$3,314.30 (6,026 sf X \$0.55/sf). Mitigation for the proposed lot coverage in excess of 31.25 percent will be met through the installation of a micro-bioretenion facility, which will capture and provide water quality treatment for road runoff. In addition, an approved Critical Area Management Plan is required. Given these mitigative measures, granting of this variance will be in harmony with the spirit and intent of the Critical Area Regulations. Therefore, the fifth criterion can be met,

Based upon our review, this Department finds that the first four of the above criteria have been met, and that the fifth criterion can be met by the full implementation of and approved Critical Area Management Plan. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. Mitigation for forest clearing in excess of 30 percent shall be provided by the payment of a fee-in-lieu, and mitigation for lot coverage in excess of 31.25 percent shall be provided by the installation of a bio-retention pond, as stated above. This shall be accomplished in accordance with an approved, final Critical Area Management Plan, which must include, in part, orange, high-

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Libs Lane Extended
Critical Area Administrative Variance
DEPS Tracking #02-19-2941
April 15, 2019
Page 4

visibility fencing, and which must be approved prior to the issuance of any permit. All fees-in-lieu must be received by this Department prior to the issuance of any permit.

2. Add the following note to all plans for this project, including the Critical Area Management Plan: "A Critical Area Variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from the Baltimore County Code, Article 33, Environmental Protection and Sustainability, Title 2, Chesapeake Bay Critical Areas Protection for the purposes of clearing forest in excess of 30 percent, and for constructing lot coverage in excess of 31.25 percent. Mitigation has been provided for these actions by the payment of a fee-in-lieu of planting and the installation of a bio-retention pond, respectively. The construction of the extension of Libs Lane is reflective of the fact that the variance was granted. The variance was conditionally approved to reduce water quality impacts."

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until 30 days after variance approval, pursuant to Natural Resources Article, Section 8-1808 (d))6(ii).

Please have the property owner(s) sign the statement on the following page, and return the original copy of this letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Thomas Panzarella at 410-887-3980.

Sincerely,

David V. Lykens
Acting Director

DVL:tcp

Mr. Henry Leskinen
Libs Lane Extended
Critical Area Administrative Variance
DEPS Tracking #02-19-2941
April 15, 2019
Page 5

I/We have read and agree to implement the above requirements to bring my/our property, located on Libs Lane extended, between Morse Lane and Libs Lane, into compliance with the Chesapeake Bay Critical Area regulations.

Property Owner(s) Signature(s) (All Owners Must Sign)	Date
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Printed Name(s) of Owner(s)	Date
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